

## Senate Bill No. 857

### CHAPTER 539

An act to amend Sections 3509, 3514.5, 3541.3, 3563.3, 71639.1, and 71825 of the Government Code, and to amend Section 99561 of the Public Utilities Code, relating to public employment.

[Approved by Governor October 7, 2011. Filed with  
Secretary of State October 7, 2011.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 857, Lieu. Public employment: unlawful strike damages.

Existing law establishes the Public Employment Relations Board (PERB). Under existing law, PERB has the power and duty to investigate an unfair practice charge and to determine whether the charge is justified and the appropriate remedy for the unfair practice.

This bill would specify that PERB has no authority, in an action to recover damages due to an unlawful strike, to award strike-preparation expenses as damages, or to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike. The bill would state that its provisions are declaratory of existing law and that it is not intended to modify existing law that authorizes a court to award damages for otherwise unlawful conduct committed during a strike.

*The people of the State of California do enact as follows:*

SECTION 1. Section 3509 of the Government Code is amended to read:

3509. (a) The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter and shall include the authority as set forth in subdivisions (b) and (c). Included among the appropriate powers of the board are the power to order elections, to conduct any election the board orders, and to adopt rules to apply in areas where a public agency has no rule.

(b) A complaint alleging any violation of this chapter or of any rules and regulations adopted by a public agency pursuant to Section 3507 or 3507.5 shall be processed as an unfair practice charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board, except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.

The board shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this chapter.

(c) The board shall enforce and apply rules adopted by a public agency concerning unit determinations, representation, recognition, and elections.

(d) Notwithstanding subdivisions (a) to (c), inclusive, the employee relations commissions established by, and in effect for, the County of Los Angeles and the City of Los Angeles pursuant to Section 3507 shall have the power and responsibility to take actions on recognition, unit determinations, elections, and all unfair practices, and to issue determinations and orders as the employee relations commissions deem necessary, consistent with and pursuant to the policies of this chapter.

(e) Notwithstanding subdivisions (a) to (c), inclusive, consistent with, and pursuant to, the provisions of Sections 3500 and 3505.4, superior courts shall have exclusive jurisdiction over actions involving interest arbitration, as governed by Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, when the action involves an employee organization that represents firefighters, as defined in Section 3251.

(f) This section shall not apply to employees designated as management employees under Section 3507.5.

(g) The board shall not find it an unfair practice for an employee organization to violate a rule or regulation adopted by a public agency if that rule or regulation is itself in violation of this chapter. This subdivision shall not be construed to restrict or expand the board's jurisdiction or authority as set forth in subdivisions (a) to (c), inclusive.

SEC. 2. Section 3514.5 of the Government Code is amended to read:

3514.5. The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board, except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board and shall include all of the following:

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following: (1) issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge; (2) issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration. However, when the charging party demonstrates that resort to contract grievance procedure would be futile, exhaustion shall not be necessary. The board shall have discretionary jurisdiction to review a settlement or arbitration award reached pursuant to the grievance machinery solely for the purpose of determining

whether it is repugnant to the purposes of this chapter. If the board finds that the settlement or arbitration award is repugnant to the purposes of this chapter, it shall issue a complaint on the basis of a timely filed charge, and hear and decide the case on the merits; otherwise, it shall dismiss the charge. The board shall, in determining whether the charge was timely filed, consider the six-month limitation set forth in this subdivision to have been tolled during the time it took the charging party to exhaust the grievance machinery.

(b) The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

(c) The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including, but not limited to, the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

SEC. 3. Section 3541.3 of the Government Code is amended to read:

3541.3. The board shall have all of the following powers and duties:

(a) To determine in disputed cases, or otherwise approve, appropriate units.

(b) To determine in disputed cases whether a particular item is within or without the scope of representation.

(c) To arrange for and supervise representation elections that shall be conducted by means of secret ballot elections, and certify the results of the elections.

(d) To establish lists of persons broadly representative of the public and qualified by experience to be available to serve as mediators, arbitrators, or factfinders. In no case shall these lists include persons who are on the staff of the board.

(e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.

(f) Within its discretion, to conduct studies relating to employer-employee relations, including the collection, analysis, and making available of data relating to wages, benefits, and employment practices in public and private employment, and, when it appears necessary in its judgment to the accomplishment of the purposes of this chapter, recommend legislation. The board shall report to the Legislature by October 15 of each year on its activities during the immediately preceding fiscal year. The board may enter into contracts to develop and maintain research and training programs designed to assist public employers and employee organizations in the discharge of their mutual responsibilities under this chapter.

(g) To adopt, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, rules and regulations to carry out the provisions and effectuate the purposes and policies of this chapter.

(h) To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of any

employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction. Notwithstanding Section 11425.10, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 does not apply to a hearing by the board under this chapter, except a hearing to determine an unfair practice charge.

(i) To investigate unfair practice charges or alleged violations of this chapter, and take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter, except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.

(j) To bring an action in a court of competent jurisdiction to enforce any of its orders, decisions, or rulings, or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

(k) To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions, except that no fewer than two board members may participate in the determination of any ruling or decision on the merits of any dispute coming before it, and except that a decision to refuse to issue a complaint shall require the approval of two board members.

(l) To decide contested matters involving recognition, certification, or decertification of employee organizations.

(m) To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

(n) To take any other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

SEC. 4. Section 3563.3 of the Government Code is amended to read:

3563.3. The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including, but not limited to, the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter, except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.

SEC. 5. Section 71639.1 of the Government Code is amended to read:

71639.1. (a) As used in this article, "board" means the Public Employment Relations Board established pursuant to Section 3541.

(b) The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this article and shall include the authority as set forth in subdivisions (c) and (d). Included among the appropriate powers

of the board are the power to order elections, to conduct any election the board orders, and to adopt rules to apply in areas where a trial court has no rule.

(c) A complaint alleging any violation of this article or of any rules and regulations adopted by a trial court pursuant to Section 71636 shall be processed as an unfair practice charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this article, shall be a matter within the exclusive jurisdiction of the board, except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike. The board shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this article and Section 71639.3. The board shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge, except that if the rules and regulations adopted by a trial court require exhaustion of a remedy prior to filing an unfair practice charge or the charging party chooses to exhaust a trial court's remedy prior to filing an unfair practice charge, the six-month limitation set forth in this subdivision shall be tolled during such reasonable amount of time it takes the charging party to exhaust the remedy, but nothing herein shall require a charging party to exhaust a remedy when that remedy would be futile.

(d) The board shall enforce and apply rules adopted by a trial court concerning unit determinations, representation, recognition, and elections.

(e) This section does not apply to employees designated as management employees under Section 71637.1.

(f) The board shall not find it an unfair practice for an employee organization to violate a rule or regulation adopted by a trial court if that rule or regulation is itself in violation of this article.

SEC. 6. Section 71825 of the Government Code is amended to read:

71825. (a) As used in this section, "board" means the Public Employment Relations Board established pursuant to Section 3541.

(b) The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter and shall include the authority as set forth in subdivisions (c) and (d). Included among the appropriate powers of the board are the power to order elections, to conduct any election the board orders, and to adopt rules to apply in areas where a regional court interpreter employment relations committee has no rule.

(c) A complaint alleging any violation of this chapter or of any rules and regulations adopted by a regional court interpreter employment relations committee pursuant to Section 71823 shall be processed as an unfair practice charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board, except that in an action to recover damages due

to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike. The board shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this chapter and subdivision (b) of Section 71826. The board shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge, except that if the rules and regulations adopted by a regional court interpreter employment relations committee require exhaustion of a remedy prior to filing an unfair practice charge or the charging party chooses to exhaust a regional court interpreter employment relations committee's remedy prior to filing an unfair practice charge, the six-month limitation set forth in this subdivision shall be tolled during such reasonable amount of time it takes the charging party to exhaust the remedy, but nothing herein shall require a charging party to exhaust a remedy when that remedy would be futile.

(d) The board shall enforce and apply rules adopted by a regional court interpreter employment relations committee concerning unit determinations, representation, recognition, and elections.

(e) This section does not apply to employees designated as management employees.

(f) The board shall not find it an unfair practice for an employee organization to violate a rule or regulation adopted by a regional court interpreter employment relations committee if that rule or regulation is itself in violation of this chapter.

SEC. 7. Section 99561 of the Public Utilities Code is amended to read:

99561. This chapter shall be administered by the Public Employment Relations Board. In administering this chapter the board shall have all of the following rights, powers, duties, and responsibilities:

(a) To determine in disputed cases, or otherwise approve, appropriate units.

(b) To determine in disputed cases whether a particular item is within or without the scope of representation.

(c) To arrange for, and supervise, representation elections that shall be conducted by means of secret ballot elections, and to certify the results of the elections.

(d) To establish lists of persons broadly representative of the public and qualified by experience to be available to serve as mediators, arbitrators, or factfinders. In no case shall the lists include persons who are on the staff of the board.

(e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.

(f) To adopt, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, rules and regulations to carry out the provisions and effectuate the purposes and policies of this chapter.

(g) To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction, except for those records, books, or papers confidential under statute. Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a hearing by the board under this section, except a hearing to determine an unfair practice charge.

(h) To investigate unfair practice charges or alleged violations of this chapter, and to take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter, except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.

(i) To bring an action in a court of competent jurisdiction to enforce any of its orders, decisions, or rulings or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

(j) To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions, except that no fewer than two board members may participate in the determination of any ruling or decision on the merits of any dispute coming before it, and except that a decision to refuse to issue a complaint shall require the approval of two board members.

(k) To decide contested matters involving recognition, certification, or decertification of employee organizations.

(l) To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

(m) To take any other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

SEC. 8. The amendments made by this act do not constitute a change in, but are declaratory of, existing law. These amendments are not intended to modify existing law holding that a court of competent jurisdiction may, upon a showing by clear and convincing evidence, award costs, expenses, or lost revenue resulting from independently unlawful, tortious activity, such as vandalism, property damage, mass picketing, or the unlawful blocking of ingress or egress from the struck facility.